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Before the
Federal Communications Commission
Washington D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

**Equal Access and Interconnection
Obligations Pertaining to
Commercial Mobile Radio Services**

CC Docket No. 94-54

To: The Commission

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COMMENTS

Point Communications Company ("Point") hereby submits its comments on the Notice of Proposed Rulemaking and Notice of Inquiry released on July 1, 1994 ("Notice") in this proceeding.

Small Operator Perspective

Point is the licensee of Cellular System KNKN 231 in the Oregon-4 Rural Service Area.¹ These comments reflect the perspective of an experienced small communications company which sees business opportunities, as well as consumer benefits, in the broadening of competition in communications. Point urges the Commission to consider the effect of the proposals in this proceeding on the ability of small CMRS carriers to emerge as viable competitors in the local exchange service marketplace, and not merely their effect on the interexchange carrier ("IXC") service marketplace.

¹ Point's system was among the first, if not the first, of the independently operated nonwireline cellular systems to go on the air in the rural service areas. Point has successfully operated its system on a standalone basis for over four years.

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Equal IXC Access Is Not Yet Feasible For Small Carriers

Carriers operating in the RSAs and smaller MSAs do not have a sufficient volume of interLATA traffic to make equal access cost effective. With the complex software changes to switches and the amount of port and trunk group capacity that would be needed, equal access would cause an overall increase rather than a decrease in the cost of the cellular service provided to end users. Small carriers simply do not have the usage base or resources to amortize these huge expenses without significantly increasing prices. This would disadvantage small carriers and hinder their ability to compete with larger regional carriers operating in their same local market. It would also have a negligible effect on promoting competition in the IXC service market because the total volume of interLATA traffic is so small.

Furthermore, an equal IXC access requirement could have the undesirable effect of prolonging local exchange carrier ("LEC") control over the local loop. The most desirable form of access to promote between a cellular carrier and an IXC is direct physical access accomplished without any use of the resident LEC's bottleneck facilities. Any interconnection arrangement that completely cuts the LEC out of the local loop reduces the LEC's monopoly power and advances the cause of local competition. Unfortunately, although the most desirable from a competitive network standpoint, this is the most expensive IXC access arrangement to implement on a 1+ presubscribed or equal access basis. While this type of access currently exists between a cellular carrier and a single IXC in many markets, small cellular carriers could simply not afford to establish similar arrangements with all IXCs operating in their markets to satisfy an equal access requirement. Instead, if an

equal access requirement were adopted, they would be forced to arrange for 1 + presubscribed access via the LEC's tandem, an arrangement which would set back rather than advance the goal of a fully integrated and competitive local network.

Multiple IXC Access Already Exists

Cellular Carriers can provide end users with the ability to use an IXC of their choice by means other than equal access, and many already do. Through Feature Group A or B access, end users can use their toll carrier of choice for any calls that the toll carrier is authorized or capable of transporting. Historically, with a twenty-something number dialing pattern, Feature Group A or B access was cumbersome. Carriers with such access to the landline network were disadvantaged when compared to AT&T's omnipresent automatic 1 + access. However, although not yet fully competitive, the local network has changed. On a cellular system today AT&T may be the IXC with Feature Group A or B access, and one of its old upstart resellers may have the coveted 1 + access. That's competition at work. Additionally, with the speed calling and programming functions of cellular phones today, from an end user's perspective Feature Group A or B can be functionally equivalent to 1 + access. End user choice can and does exist without mandated equal IXC access.

Mitigating Steps In Case Equal IXC Access Is Mandated For Small Carriers

However, if the Commission decides that small carriers must provide equal access, then it should also take several steps to mitigate against anti-competitive side effects of this requirement.

Small cellular carriers should at the very least be given a five-year phase-in period to satisfy the requirement. The phase-in period must allow sufficient time for carriers to upgrade their facilities and reach agreements with IXC's on the provision of equal access.

The Commission should require IXC's to connect directly to cellular carriers whenever feasible, at the cost of the IXC desiring connection. The equal access interconnections between IXC's and cellular carriers should by pass LEC facilities to further the goal of a fully integrated and competitive local exchange network.

The Commission should also require IXC's to compensate cellular carriers for the costs associated with providing access to local cellular networks. This compensation would be similar to the compensation the LECs receive from IXC's for providing the same access, except that the compensation should probably be higher because the cost of completing the wireless portion of calls is typically higher than on a wired system, which has had decades to amortize its investment. Compensation should also include upfront payments to cover the cellular carriers' costs for the switch port facilities and software upgrades necessary to connect IXC's to the cellular networks on an equal access basis. This would be in addition to the on-going usage-sensitive payments for the IXC's' interLATA traffic that is carried on the cellular networks. If the Commission mandates equal access without requiring such compensation, small cellular carriers will have no bargaining power with IXC's and IXC's will have no incentive to compensate them fairly.

CMRS/LEC Interconnection

Interconnection between CMRS and local exchange carriers is still a one way street favoring the LECs because of their monopoly market power. The LECs' control over

bottleneck facilities is as well known as their history of frustrating federal interconnection policy. Regrettably but predictably, the current system of "good faith" negotiations between LECs and cellular carriers over interconnection facilities and rates simply does not work. "Good faith" is reduced to a minimum when one party has no choice but to deal with the other. This is especially true for small carriers who have little bargaining power.

For example, last year U.S. West Communications ("U.S. West") announced a revenue neutral restructuring of its interconnection rates. Negotiations were conducted over many months, predominantly between U.S. West and large regional carriers. When the major rate issues were resolved between them, U.S. West announced the results, threw some last minute bones to the disenfranchised small carriers, and Point was faced with rate increases that averaged 20%. This is the nature of the "good faith negotiation" beast.

Require Interconnection Tariffs From The LECs

Because negotiation does not work for small independent carriers, the Commission should require LECs to file FCC interconnection tariffs. The interests of small carriers would be far better served by the Commission oversight that the filing of FCC interconnection tariffs would bring. In addition, the Commission should preempt state authority and require the LECs to include all rate elements, both inter and intrastate, in these tariffs. Wireless communications is truly a national service, and the regulatory balkanization of LEC interconnection rates only serves to assist the LECs in disregarding federal interconnection policy and impairing the development of CMRS as a viable competitor in the local loop.

Filing of Interconnection Agreements With The FCC

If the Commission decides not to require LECs to file interconnection tariffs then minimally it should require the filing of negotiated interconnection agreements between the LECs and CMRS carriers with the FCC. The Commission should establish new minimum requirements for these agreements, tighten previously established requirements, and make clear its intent to strictly and swiftly enforce these requirements, should the need arise. With these agreements available for public inspection on a national level, CMRS carriers could not only ascertain whether their resident LEC is providing like services at the same rates to all CMRS carriers, but they could also compare services and rates on a region by region basis.

The Commission should require that these negotiated agreements between LECs and CMRS carriers include a most favored nation clause that would guarantee that the same terms, conditions and rates available to any one CMRS carrier will be made available to all other CMRS carriers entering into agreements for like services. While Point would not expect any LEC to intentionally discriminate against any customer, whether co-carrier or end user, such a clause would safeguard carriers against unintentional discrimination. It would also give carriers some additional recourse should any disagreements arise over what constitutes "like" services.

Mutual Compensation

Most important of all, however, the Commission must mandate that all interconnection arrangements, whether tariffed or negotiated, include mutual compensation at no less than the rates that CMRS carriers are paying their LECs. The Commission has for some time espoused the principle of mutual compensation between landline LECs and cellular

carriers. In the Notice, the Commission clearly states that "LECs must compensate CMRS providers for the reasonable costs they incurred in terminating traffic that originates on LEC networks."

However, despite this clear FCC policy, there is little to no real mutual compensation between LECs and cellular carriers today. With the exception of perhaps a few very isolated cases, all compensation is one way -- mobile to land -- CMRS to LEC. No doubt the LECs will protest that as compensation to cellular carriers for land to mobile traffic, they have appropriately reduced the rates they charge for mobile to land traffic. No doubt they could concoct data to support this claim. But, as is well known, the LECs have an inglorious history of smoke and mirrors. There will only be real mutual compensation when the LECs are forced to pay all CMRS carriers for land to mobile traffic at no less than the rates they have imposed on CMRS carriers for mobile to land traffic. In addition, LECs must also be required to pay their fair proportionate share of the fixed line rates they are charging CMRS carriers. It costs a CMRS carrier more to terminate calls than it costs a LEC. It is time that CMRS carriers are justly compensated for these costs.

Real mutual compensation would have numerous benefits. Cellular end user rates would likely decrease when these end users are no longer forced to subsidize LEC traffic. Real competition in the local exchange markets will never develop as long as CMRS end users are forced to pay these unfair subsidies. With mutual compensation, interconnection rates would be more likely to stabilize and reflect the actual costs of interconnection and switching services when both LEC and CMRS carrier are each paying their proportionate share of these costs. Entry into the local exchange market would also be made easier and

less costly for start-up PCS carriers. Mutual compensation would provide an incentive, once traffic volume merits, for CMRS carriers to by pass the LEC and interconnect directly with one another. In short, setting mutual compensation in place now among all wireline and wireless carriers would facilitate the development of a fully interconnected, integrated and competitive public switched telephone network, comprised of wireless as well as wired facilities. The benefits of this new network would extend to everyone, not least of all its end users.

Respectfully submitted,

Point Communications Company

A handwritten signature in black ink, appearing to read "John Hearne", with a small asterisk to its right.

John Hearne, Chairman
Alvin Souder, Vice Chairman

Dated: September 12, 1994

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* Original signature page will be submitted within five (5) business days.